Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company *and* Sales Drivers, Deliverymen, Warehousemen and Helpers Local 949, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 23-CA-6985

December 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 11, 1979, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding, and on January 17, 1979, he issued an Erratum. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.

We adopt the Administrative Law Judge's finding that Respondent violated Section 8(a)(3) of the Act, as interpreted by *N.L.R.B.* v. *J. Weingarten, Inc.*,[3] by denying employee Ross' request for a representative at the meeting of March 3 during which Respondent questioned Ross and then discharged him for being in a restricted area without permission with some of Respondent's product in his possession. There is, however, a question concerning the proper remedy for the *Weingarten* violation. The Administrative Law Judge ordered reinstatement and backpay for Ross on the ground that Ross' discharge was the "result" of the unlawful interview. Respondent, however, excepts to these remedies for two reasons: (1) there is no showing that Ross was discharged for requesting a representative, or that the discharge itself was unlawful and (2) reinstatement and backpay in this instance would not restore the *status quo ante.*

We find merit in Respondent's exception. Following the Administrative Law Judge's Decision in the instant case, the Board has enunciated a standard for determining in what instance reinstatement and backpay are appropriate remedies for a *Weingarten* violation. In *Illinois Bell Telephone Company*,[4] we held that:

> [W]here the General Counsel shows that an unlawful investigatory interview has occurred, and that the employee was disciplined or discharged for conduct which was the subject of the interview, the burden then shifts to the employer to show that its decision to discipline or discharge was not based on information which it obtained at the interview.

In the instant case, the General Counsel established that an unlawful interview occurred, and that Ross was discharged for conduct that was the subject of the interview. The record reveals, however, that Ross testified that, during the interview, Plant Manager Meier inquired why Ross had left his post without permission and whether he knew that he had been in a restricted area. According to Ross, he responded that he was in the area while obtaining his lunch, a fact confirmed by Supervisor Mica. He also disputed the contention that he had left without permission, telling Meier that he "wasn't used to" reporting to anyone when taking his lunch break. Ross further testified that he denied knowing that the area was "restricted." Meier then explained to Ross why the area was restricted and then, according to Ross, "they went on to explain, telling me why they were terminating me. Because I was in a restricted area, and I left my post without permission, and I was in a restricted area with a case of product." Thus, while Ross was not told he was being discharged until after he "told his story," the record establishes that Ross' "story" amounted to nothing more than what Respondent already knew—that he was in a re-

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We note that although in framing the issue herein the Administrative Law Judge refers to employee Ross' March 3, 1978, meeting with Supervisor Mica and Plant Manager Meier as a "disciplinary meeting," it is clear from the record and the rest of the Administrative Law Judge's Decision that that meeting constituted an investigatory interview which Ross might reasonably have believed would result in disciplinary action.

[2] In his recommended Order, as modified by the Erratum, the Administrative Law Judge provided that Respondent cease and desist, *inter alia*, from denying employee requests that a union representative or fellow employee be present at investigatory interviews or meetings which the employee reasonably believes may result in disciplinary action. This provision remedies Respondent's specific conduct which occurred prior to the Board's certification of the Union as bargaining representative of Respondent's employees. See *Materials Research Corporation*, 262 NLRB No. 122 (1982); *Anchortank, Inc.*, 239 NLRB 430 (1978), enfd. as modified 618 F.2d 1153 (5th Cir. 1980).

[3] 420 U.S. 251 (1975).

[4] 251 NLRB 932 (1980), remand 674 F.2d 618 (7th Cir. 1982). See also *Kraft Foods, Inc.*, 251 NLRB 598 (1980).

stricted area with a case of product.[5] No additional damaging information was obtained.

In arguing in support of a make-whole remedy, our dissenting colleague's reliance on the subsequent participation of Personnel Director Ferguson is misplaced. Ferguson was called after Meier had told Ross he was discharged and only because Ross then requested to speak to someone of Ferguson's authority. Whatever post-discharge statements Ross made were not, therefore, part of Respondent's "investigation" and played no part in Respondent's decision. Even our dissenting colleague concedes that Ross' discharge was authorized by Ferguson before Ross was called into Meier's office.

Finally, we cannot agree with our dissenting colleague that this case is governed by *Ohio Masonic Home*.[6] There, the Board found that an employee was suspended because she did not have a satisfactory explanation in response to complaints about her job performance. The Board therefore concluded that the suspension was based, at least in part, on information obtained during an unlawful interview. However, the mere fact that discipline is imposed for misconduct which was the subject of a *Weingarten* violative interview does not irrefutably establish the required casual link between the interview and the discipline. To hold otherwise would render meaningless any attempt by a respondent to establish that it did not rely on any information obtained during an unlawful interview in deciding to discipline an employee.[7] Here, Ross was discharged because his supervisor found him in a restricted area with a case of product, not because he could not satisfactorily explain the circumstances of his alleged misconduct. Since Ross was discharged for cause and the unlawful interview produced no information other than that which Respondent already possessed, we will issue only a cease-and-desist order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge [as corrected by his Erratum], as modified below, and hereby orders that the Respondent, Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company, Houston, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 2(a) and (b) and reletter the subsequent paragraphs accordingly.

2. Substitute the attached notice for that of the Administrative Law Judge.

MEMBER JENKINS, dissenting in part:

For the reasons stated in my partial dissent in *Kraft Foods, Inc.*,[8] I would order a "make-whole" remedy whenever it has been established that an employee has been disciplined for conduct which was the subject of an interview conducted in violation of *Weingarten*.[9] Since such was the case herein with regard to employee Ross, I would order his reinstatement with full backpay without engaging in any further anaylsis as to whether Respondent has established that its decision to discharge Ross was not based on information obtained at the unlawful interview; I engage in such analysis herein only because my colleagues consider it pivotal in resolving this matter.

At the outset, I note that prior to the Board's decision in *Kraft Foods, Inc., supra*, the timing of and the circumstances surroundng a disciplinary decision were virtually irrelevant in cases where it was established that the discipline was for conduct which had been the subject of an interview conducted in violation of *Weingarten, supra*. As the instant matter involves a *Weingarten* violation, Administrative Law Judge Itkin did not make specific findings of fact of credibility resolutions as to these now-crucial matters. Accordingly, to the extent that Administrative Law Judge Itkin failed to make such findings or resolutions, my analysis herein is based on a *de novo* review of the record and, where the testimony is contradictory, on the testimony of Respondent's witnesses.[10]

Having so reviewed the entire record in this matter, I cannot understand how my colleagues can conclude that Respondent has established that its decision to discipline Ross was based solely on information obtained independently of the unlawful interview. The facts herein are substantially similar to those in *Ohio Masonic Home*,[11] where the Board

[5] Ross' denial of knowledge as to how the case of product was put in his forklift was originally made to Supervisor Mica the previous day.

[6] 251 NLRB 606 (1980).

[7] See *Kraft Foods, Inc., supra*. We find this case to be similar to *Kraft*, where the Board refused to order a "make-whole" remedy. The information obtained during the unlawful interview therein amounted to nothing more than the employee's denial that he had been involved in a fight and his confirmation of the location of a forklift collision—"information" which did not add to what the respondent already knew. See also *Pacific Telephone and Telegraph Company*, 262 NLRB 1034 at fn. 2 (1982).

[8] 251 NLRB 598 (1980).

[9] *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975).

[10] This is not because such testimony is more credible, but rather because some resolution must be made and it is not unreasonable to bind Respondent to the testimony of its own witnesses. To the extent that Respondent's witnesses contradict each other, I rely on the testimony of the witnesses within whose knowledge such fact would most likely be. For example, for the reason relied on by Respondent to support its decision to discharge Ross, I rely on the testimony of Respondent's director of personnel, Mitchel M. Ferguson, the one who initially authorized Ross' discharge and later affirmed that decision.

[11] 251 NLRB 606 (1980).

concluded that the respondent had based its disciplinary decision, at least in part, on "information" obtained at an unlawful interview[12] and, therefore, a "make-whole" remedy was found to be appropriate. Furthermore, to the extent that the facts herein are distinguishable from those in *Ohio Masonic Home, supra*, they are similar to those in *Texaco, Inc.*,[13] where a "make-whole" remedy was found to be appropriate.

The record herein shows that the sole reason relied on by Respondent to support its decision to discipline[14] Ross was the fact that he was found to be in unauthorized possession of company property; more specifically, because Supervisor Mica found a case of Coca-Cola hidden in the motor housing of the forklift Ross was operating and it was concluded that Ross had put it here.

On March 3, 1980, Respondent questioned Ross, in violation of *Weingarten, supra*, regarding the case of Coca-Cola found in his forklift. A summary of that interview is as follows:

> Ross and Supervisor Mica were waiting outside Plant Manager Meier's office when Ross asked Mica "could I have a Union representative or someone that's in the Company, a Union member, for a witness." Mica replied "He [Mica] didn't know nothing about this." Mica then went into Meier's office and they talked for about 15 minutes, during which time Meier called Ferguson, Respondent's Director of Personnel, who authorized Ross' discharge. Ross was then called into the office and Meier had Mica tell his story and requested that Ross tell his story, which he did. (There is no testimony as to what Ross' "story" was.) Meier then proceeded to discuss with Ross the merits of his alleged offenses.[15] *After* Ross had "told his story" and *after* they had discussed the merits of the alleged offenses, Meier informed Ross that he was to be discharged.[16]
>
> Having been informed of his fate, Ross stated "Isn't there anybody that I can talk to that can help me? *I know I have screwed up*; I want to keep my job." [Emphasis supplied.] Meier then called Ferguson (who was at another plant) who indicated that he would be right over. While Ross was waiting for Ferguson to arrive he spoke to employee Gatson who told him that he had seen an employee known as "Rabbit" place the coke in Ross' forklift. At Ross' request, Gatson agreed to be his witness and tell Ferguson what happened.
>
> Upon his arrival, Ferguson related to Ross the information he previously had been given and he asked Ross if it was correct. After some discussion, Ross said "I think I know who put the product in the towmotor." Ferguson asked "Mr. Ross are you sure?" Ross replied "Well, somebody told me that they think they know who put the product in the towmotor." Ferguson then asked "Mr. Ross, do you know for sure who that person is?" To which Ross replied "No sir, I don't." Ferguson then told Ross that unless he was sure of who he was talking about that he (Ferguson) didn't want any names of any employees given at that time. The discussion continued. Towards the end of the discussion Ross said that *he knew he had done wrong*, that he was sorry, and that he wondered if there was anything Ferguson could do in order to get his job back. Ferguson then stated "Mr. Ross, look, put yourself in my place. Here you've got an employee who has a disciplinary problems in the past [sic] who has been suspended for three days already, who was found in an area that he didn't belong in which a case of product in [his] towmotor. What would you do, if you were in my shoes?" Ross replied "*I guess I'd have to let him go.*" To which Ferguson stated "Well, Mr. Ross, that's what we are prepared to do now." [Emphasis supplied.] Ferguson then finalized Ross' discharge by asking for his bump hat and his I.D. card.

It is clear from the above that Respondent did not discipline Ross until after Ross had "told his story."[17] Under similar circumstances in *Ohio Masonic Home, supra*, the Board held:

[12] This conclusion was based on the respondent's failure to establish nonreliance on certain "information" obtained at the unlawful interview. That "information" was the fact that the disciplined employee did not have a satisfactory response to certain complaints regarding her job performance. 251 NLRB 606, 607.

[13] 251 NLRB 633 (1980).

[14] That discipline was discharge because Ross previously had been suspended for having left the plant without authorization and, under Respondent's progressive system of discipline, discharge was the next step. Respondent's director of personnel testified that Ross would not have been discharged but for his previous suspension.

[15] Because of conflicts in the testimony, the exact number of offenses of which Ross was accused is unclear. The testimony of Ross and Mica indicates that Ross was accused of three offenses: (1) leaving his work station without permission; (2) being in a restricted or unauthorized area; and (3) being in unauthorized possession of company product. Meier's testimony indicates that Ross was accused only of the later two offenses and Ferguson testified that Ross' only offense was being in unauthorized possession of company product. In any event, my analysis of this case remains the same.

[16] Had the interview stopped at this point, the facts herein would be virtually indistinguishable from those in *Ohio Masonic Home, supra*, and that case unquestionably would control the disposition of this matter; however, the interview continued.

[17] My colleagues rely heavily on their assertion that "Ross' 'story' amounted to nothing more than what the Respondent already knew

Continued

> [W]e can only conclude that [the employee] was suspended because she did not have a satisfactory explanation in response to [certain complaints about her job performance], rather than merely because there had been some complaints. Accordingly, we conclude that the decision to suspend [the employee] was based, at least in part, on information obtained at the unlawful . . . interview. . . .[18]

It is equally clear from the above that, during the course of Ross' conversation with Ferguson, Ross confessed some wrongdoing and, in response to a direct question from Ferguson, Ross indicated that he agreed that he should be terminated. In this regard, I consider the following excerpt from Chairman Fanning's and Member Penello's concurring opinion in *Texaco, Inc., supra*, to be most apropos:

> It is extremely difficult to discern how an employer could (1) decide to continue its investigation of employee misconduct through an interview of an accused employee, (2) affirmatively solicit from the employee information relating to the misconduct, and (3) in fact succeed in obtaining perhaps the most telling information available to merit a decision to discipline and yet befound not to have based its disciplinary decision, in any way, on the information it was so successful in securing.[19]

In short, I cannot understand how my colleagues can conclude that a "make-whole" remedy is not appropriate in a case so similar to two decisions where such a remedy was specifically found to be appropriate; I perceive no reason to do so. Accordingly, I dissent.

. . . . No additional damaging information was obtained." Aside from the fact that the record herein is devoid of credited testimony as to what Ross' "story" was, Member Fanning's reliance on this assertion is in direct conflict with his concurring opinion in *Texaco, Inc., supra*. As to my colleagues characterization of Personnel Director Ferguson's participation in this matter as being post-discharge and, therefore, not part of Respondent's "investigation," it is sufficient to note that Ferguson is the one who initially authorized Ross' discharge and later affirmed that decision *after* his discussion with Ross.

[18] 251 NLRB at 607.

[19] 251 NLRB at 638.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT warn our employees that we will never sign a contract with Sales Drivers, Deliverymen, Warehousemen and Helpers Local 949, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

WE WILL NOT warn our employees that they will lose existing benefits or get more onerous work rules if they chose union representation.

WE WILL NOT deny employee requests that a union representative or fellow employee be present at investigatory interviews or meetings which the employee reasonably believes may result in disciplinary action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

GREAT WESTERN COCA COLA BOTTLING COMPANY, D/B/A HOUSTON COCA COLA BOTTLING COMPANY

DECISION

FRANK H. ITKIN, Administrative Law Judge: The unfair labor practice charge in this case was filed on March 28, 1978. The complaint issued on May 3, 1978, and was later amended at the hearing. The case was heard on August 3, 1978, in Houston, Texas. The issue presented is whether Respondent Company violated Section 8(a)(1) of the National Labor Relations Act by denying employee Steven Ross' request for a union representative or union member to assist him during a disciplinary meeting with management and, further, by making coercive statements to employees concerning their right to have union representation. Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by counsel, I make the following:

FINDINGS OF FACT

A. *Introduction*

Respondent Company, a Tennessee corporation, is engaged in the business of bottling and distributing Coca Cola and other beverages. It maintains its principal office and place of business at 2800 Bissonnet Street in Houston. It also maintains a facility at 2819 Berkely Street in Houston, known as the Gulfgate plant. During the prior 12 months, it purchased goods valued in excess of $50,000 directly from firms located outside of Texas. These goods were shipped directly to the Company's facility in Houston from outside of Texas. I therefore find and conclude, as admitted, that Respondent Company is an employer engaged in commerce within the meaning

of Section 2(6) and (7) of the Act. I also find and conclude, as admitted, that Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.

On March 18, 1977, the Union filed a petition with the Regional Director for Region 23, seeking to represent certain of the Company's employees at its Houston facility. On May 17, 1977, the Regional Director issued a Decision and Direction of Election. On June 9, 1977, an election was conducted among the employees in the unit found appropriate. The Union received a majority of the ballots cast. The Company thereafter filed timely objections to conduct affecting the results of the election and, during November 1977, a hearing was held on the objections. On March 13, 1978, a Board hearing officer issued his report recommending that the Company's objections be overruled and that an appropriate certification issue. On March 24, 1978, the Company mailed to the Board its exceptions to the hearing officer's report. Thereafter, on May 31, 1978, the Board issued its Decision and Certification of the Union. (Case 23-RC-4503.)

B. *The Evidence Pertaining to Supervisor Ronald Mica's Coercive Statements to Employees*

Steven Ross was hired by the Company as a forklift operator at the Gulfgate plant about June 1977. He was ineligible to vote in the Board-conducted representation election because, as Ross testified, "I was hired . . . about three days before the election." He later spoke with a union representative, signed a union membership card, and attended about five union meetings. He also wore union stickers and buttons during his employment at the plant.

Employee Ross recalled that about December 1977 he had the following conversation at work with Supervisor Ronald Mica: ". . . he [Mica] came over to me [Ross] and he asked me about picking up some cans off the floor . . . I was sitting on my forklift, just sitting there . . . I told him it wasn't my job, picking up cans. . . . It was the porter's job. . . . he said, 'you and your Union cats . . . it's not going to do nothing for you,' something like that." Ross, as discussed below, was terminated on March 3, 1978.

Kenneth Gatson is presently employed by the Company as a machine operator. Gatson recalled that from about early December 1977 until March 3, 1978, he and Supervisor Mica "talked about [the Union] quite a bit. . . ." Gatson testified in part as follows:

> Q. Tell us some of the things that was said to you by Mr. Mica during this period of time.
>
> A. Well, he probably talked about rules and —
>
> Q. What did he say about rules?
>
> A. What the Company will do if we get the Union. No smoking, no eating, you know.
>
> * * * * *
>
> Q. Do you recall anything else he told you about the Union?
>
> A. Talked about almost every issue. Just about uniforms.
>
> Q. What do you recall him saying about uniforms?
>
> A. We would probably have to end up paying for our own uniforms.
>
> Q. Were you getting your uniforms free at the time?
>
> A. Oh, yeah. We were getting them free.
>
> * * * * *
>
> Q. Did the name of the Company president ever come up in your conversations with Mr. Mica?
>
> A. (No response)
>
> Q. Answer. Did the name of the Company president ever come up in your conversations with Mr. Mica?
>
> A. Yes, sir.
>
> Q. What is the Company president's name?
>
> A. Mr. Hannegan.
>
> Q. What did Mr. Mica say about Mr. Hannegan?
>
> A. He said that Mr. Hannegan, as long as he be there, he would never sign a contract.[1]

Ronald Mica was employed by Respondent Company as a supervisor from about October 1977 until June 1978. Mica claimed that he had been instructed by Plant Manager Loman Meier "to refrain from discussing Union activities . . . with the employees." Elsewhere, Mica testified:

> Q. During his employment as a machine operator, did you ever have occasion to have any discussion with Gatson about a Union?
>
> A. Yes. Mr. Gatson would have the—well, I guess, you know, some of the working conditions and pay raises, wages, what have you. This was, more or less, a regular thing in the plant.
>
> Q. I'm talking about just now between you and Gatson. Was there any discussion between the two of you?
>
> A. Well, yes. Mr. Gatson was the type of individual that wanted, more or less, to make more money like everybody else. I don't think it was so much as far as talking about Union. I think it was more—well, could I get a raise? My hands were tied. Certainly, if the raises were to come along and it was entitled to him, he would surely get it. But that was as far as it was going.

Mica had no "recollection of ever having a discussion with Gatson about no-smoking." Mica recalled that he had asked Gatson "not to eat while he was working,"

[1] On cross-examination, Gatson acknowledged that he initiated the above discussions with Mica. Gatson recalled that he stated to Mica: ". . . wait until the Union . . ." after "something might be messed up" at work. Mica then replied: "you will have certain rules and regulations the Company will give if it comes in . . . ." On another occasion, Gatson told Mica: "Wait till the time comes . . . and the employees may have their say-so . . . ." Mica then replied: "you might end up paying for your uniforms or something." On another occasion, Gatson asked Mica, "do you ever think the Union is going to get in here?" Mica then replied: "No, because Hannegan will never sign the contract as long as the Union tries to negotiate."

however, this discussion assertedly did not "have any connection with the Union." Mica was asked:

> Q. Did you ever discuss with Gatson any Union working rules.
>
> * * * * *
>
> A. Well, I guess at that time we didn't have it. Coca Cola didn't have a Union down there. So there would be no reason to discuss anything about the Union.

Mica denied, *inter alia*, discussing with Gatson the subject of "Hannegan, the president of the Company," or the "cost of uniforms." Mica did not deny Ross' testimony concerning his statement to the employee about the Union, as quoted above.

I credit the testimony of employees Ross and Gatson as summarized above. Ross' testimony concerning his conversation with Supervisor Mica about the Union was not denied by Mica. And, although Supervisor Mica generally denied statements about the Union which were attributed to him by employee Gatson, I find and conclude on this record that Gatson's testimony in this respect is more trustworthy and reliable than the testimony of Mica. Gatson is still employed by the Company. He testified under subpoena for the General Counsel. Mica's testimony was at times unclear and unresponsive. Relying also upon the demeanor of the witnesses, I am persuaded here that Mica in fact made the above-quoted statements pertaining to the Union, as related by Ross and Gatson.

C. *The Evidence Pertaining to the Discharge of Employee Steven Ross on March 3, 1978*

Employee Ross testified that he worked the evening shift at the Gulfgate plant; his starting time was about 2:30 p.m.; and he would be given a 30-minute meal break generally between 7 and 8 p.m. He brought his "lunch" from home and kept it in his automobile in the plant parking lot. Ross explained his meal routine as follows:

> I would drive [the forklift] by the gas pump next to the parking lot. I would go out the gate, open my trunk, get my lunch, come back to my forklift and . . . go to the time clock, punch . . . out, go up to the break room, have my lunch, 30 minutes, come back down, punch in, and go back to the lift.

Ross explained: "I have done that ever since I have been there."

On March 2, 1978, Ross, as he testified, "arrived" at work "a little bit before two" in the afternoon. He started work about 2:30 p.m. and promptly checked out his forklift. He was "relieved" about 4:30 p.m. for a coffee-break by a coemployee identified as Redbird. He was later relieved for his "evening meal" by Redbird about 7:30 p.m. According to Ross: "When he [Redbird] came on break, I proceeded to go out to my car to get my lunch. . . . I drove the forklift out by the gas pump, parked it, cut it off, went through the gate to the parking lot, opened my trunk, got my lunch, started back to the forklift, put my lunch on and pulled off."

At this time, employee Ross observed Supervisor Mica "walking around the forklift . . . just looking. . . ." Mica stopped Ross. Mica asked Ross, "what you got in there" and, at the same time, "opened the side panel, and there was a case of [Coca Cola] sitting inside." The case of product was "sitting on the tow motor." Ross "told" Mica that he "didn't know how it got there"—Ross assertedly "had not seen that case of product before." Mica instructed Ross "to put the pack back . . . and he [Mica] would talk to [Ross] tomorrow about it." Ross claimed that he then "put it back" and "went to lunch." Mica did not mention this incident again during the evening.

On the next day, March 3, Ross arrived at work "a little bit before two o'clock" in the afternoon. He then went "to buy [product] rejects" which are made available by the Company "every Friday." About this time, Mica "asked" Ross "to come to" Plant Manager Meier's office. Ross stated to Mica: "For what?" Mica replied: "You know what for." Mica and Ross then went to Meier's office. According to Ross, while they were waiting to speak with Meier, ". . . I [Ross] asked Ron [Mica], 'Could I have a Union representative or someone that's in the Company, a Union member, for a witness?'" Mica responded: "He [Mica] didn't know nothing about this." Ross "just sat there."

Mica then went into Meier's office and the two conferred for about 15 minutes. Ross was later called into the office. Meier questioned Ross about the incident on March 2 and then:

> . . . they [Meier and Mica] went on to explain, telling me why they were terminating me, because I was in a restricted area, and I left my post without permission, and I was in a restricted area with a case of product.

Ross recalled: "I told them I was on my lunch break, and I wasn't used to reporting to no one when I [had] taken my lunch break." Ross assertedly had been following this routine for "all the months" of his employment. Ross further recalled:

> There wasn't too much said after [that]. I requested to talk to someone, to the head of administration, like personnel or something . . . because it wasn't getting clear to them that I didn't know it was a restricted area, that I didn't know that I had to report for lunch and so on and such as that.

Plant Manager Meier "immediately called someone over at the main office." Ross was instructed "to wait outside." Ross claimed that while he was "waiting," he spoke with coworker Gatson. Ross "asked [Gatson] about the case of soda water that was in [the] forklift." Ross asked Gatson "who put it in there." Gatson responded that a coemployee identified as "Rabbit" had "put it in there." Gatson also assured Ross that he,

Gatson, "would" serve as "a witness and tell who put it in there."[2]

Shortly thereafter, Ross observed Personnel Director Mitchell Ferguson "entering [Meier's] office." Ross approached Ferguson and stated: "I [Ross] was the one that wanted to talk to him [Ferguson] about . . . my job." Ross then spoke with Ferguson, Meier, and Mica in Meier's office. Ross testified: "Well, I [Ross] was telling him [Ferguson] that at the time I did know who, you know, how the product had got off in there, if it had any reflection on my job." Ferguson replied: ". . . he didn't want to hear any names." Ross "just got quiet then." Ross recalled: "They came to the conclusion that I was wrong, my leaving my post without permission. I was in a restricted area with a case of product." Ross was terminated.[3]

Employee Kenneth Gatson testified that he had the following conversation with coworker Ross during the evening of March 2:

> . . . he [Ross] came and told me he had gotten busted. . . . He told me he got framed. . . . [He] told me . . . somebody had put a case of soda water, you know, and I told him, well I figured, you know, who had did it. . . . I told him I think—I told him Rabbit had did it.

Gatson explained:

> Well, at that time, I seen Rabbit putting products in the forklifts, you know, anybody's forklift that was available, he would jump on. He would put them in there and go outside and take off, and whenever it was available to take the products, he would take it, you know. . . .

Gatson noted that about 7 p.m. on March 2, he had observed "Rabbit . . . putting products in the long forklift by the palletizer, the area where Ross was working . . . ." In addition, Gatson testified that on the following day, March 3, Ross approached Gatson at work and "asked" Gatson, ". . . I [Ross] need you for a witness for what happened yesterday." Gatson agreed to be a witness on behalf of Ross. Later that day, Ross apprised Gatson, "Loman [Meier] just fired me. He won't accept no witnesses."

Supervisor Mica testified that on March 2, he observed employee Ross' forklift parked in an area where Ross "had really no reason to be . . ."; that Ross was then "close to his car" in the nearby parking lot; that Ross appeared to be "approaching his car"; that Ross then then "opened the passenger side and pulled out a brown bag . . ."; and that Ross then "came back to the forklift." Mica observed a case of Coca Cola above the engine inside Ross' forklift. Mica further testified in part as follows:

> Mr. Steven Ross was coming back to the forklift and he was standing there and I says—I asked him first, you know, what he actually was doing out there. It seemed—[no] it didn't seem—Mr. Steven Ross was very nervous. Why? Of course, observing the case of Coca Cola, I had asked him first of all, what he was doing out there. And he said that he was out there to get his lunch and that he was, more or less, going to go on his lunch hour. That's why he was out there, to get his lunch. I asked him about the Coke. And he said that, being very nervous, he really didn't know what it was doing there. So, with this, I asked him, I said, "Mr. Ross, will you please take that case of Coca Cola, please put it back in stock." At that time, Mr. Steven Ross got back on his forklift and did go back into the plant and put it in stock. I proceeded into the plant—
>
> * * * * *
>
> So, I went over there and I approached Mr. Steven Ross for the second time. He was shaking his head and he said that he couldn't understand how this happened and how the Coca Cola got into the forklift.
>
> * * * * *
>
> And, at that time, I asked Mr. Steven Ross to please finish out the evening and to come into the plant the following day, early, so we could discuss this. You know, the problem that we had that day.
>
> * * * * *
>
> Well, I told him to come into the plant at the front office. To the front office, early, and we would discuss this with Mr. Loman Meier. And that was all that was said.

Mica recalled what transpired on the following day, March 3, in part as follows:

> Q. When did you next see Steven Ross after Thursday night?
>
> A. Mr. Steven Ross did come in early, like I asked him to. Mr. Steven Ross was in the office, the secretary's office which is adjacent to Mr. Loman Meier's office. He was in there early. I—
>
> Q. Pardon me. You say "early." What do you mean?
>
> A. He was in there right around 2 o'clock, somewhere in that area. 2:05, 2:10. I mean, he was there early. At this time, I walked in and I said—I said, "Hi," to him.
>
> * * * * *
>
> Q. Well, what did you then do?
>
> A. I proceeded into Mr. Loman Meier's office.
>
> Q. Was anyone in there? Other than Meier?
>
> A. I don't know if there was an individual in there with him at the time or not. I really—I really

[2] Personnel Director Mitchell Ferguson identified "Rabbit" as Roland Gutierrez. Gutierrez "left" the Company some 3 weeks after the above incident.

[3] On cross-examination, Ross acknowledged that, "other than [his] one conversation with Ron Mica outside of Loman Meier's office, that's the only occasion that [he] ever asked anyone to have someone with him in Loman Meier's office . . . ."

couldn't say. But the only thing is I had, more or less, told Loman Meier that Mr. Steven Ross and I wanted to talk to him. With this, I went back to the old office which was in the production area, upstairs, and that's where Mr. Steven Ross' folder—it was a personnel file, it was my personal file on my people that worked under me.

Q. You got that?

A. Yes.

Q. Then what did you do?

A. I directly came back to Mr. Loman Meier's office.

Q. Well, when you came back to Loman Meier's office, did Ross immediately go in with you?

A. Yes, he was still sitting there.

Q. Well, did the two of you go in or did you go in again and see Meier alone?

A. I brought it in there. Mr. Loman Meier and I just kind of went over it a little bit.

Q. Was Ross present?

A. No. Mr. Ross wasn't present at that time.

Q. All right. When you passed Ross this second time then as you came back from the production area, did you say anything to Ross on that occasion?

A. No. I don't think I did.

Mica denied that there was any "discussion" on March 3 "about Mr. Ross wanting a Union representative or a member of the Union working there in the plant to attend the meeting in Loman Meier's office."

According to Mica, employee Ross was then brought into Plant Manager Meier's office. The incident of March 2 was "discussed"; Ross' "personnel record" was discussed; and Ross was terminated. (See Resp. Exhs. 1, 3, and 4.) Mica recalled that at the end of this meeting Ross "asked for help . . . if there was any person other than who was in the office that could actually help him. . . ." Mica added:

> In other words, I guess—after saying that he was terminated, he wanted to—he needed help. That's what he stated. He said, "Is there anybody in this Company that could help me."

Plant Manager Meier "suggested that we call [Personnel Director] Mitchell Ferguson and see what we could do."

Loman Meier, plant manager at the Gulfgate facility during the above incident, recalled his meeting with employee Ross on March 3, in part as follows: "Well, initially, [Mica] came in to talk about [Ross]. I asked [Mica] to get [Ross'] file. . . ." Mica promptly went to get Ross' file and returned to the office. Meier and Mica then discussed the March 2 incident and Ross' personnel record. Meier and Mica then called Ross into the office. Meier, Mica, and Ross discussed the incident and, ultimately, Ross was told that he was terminated. According to Meier, at no time during this discussion or meeting did Ross assert that "someone else" had "put the product there" or that Ross wanted "to have someone there as a witness." Meier noted that Ross would not have been terminated because of the March 2 incident "if he [Ross] had not had a previous record of disciplinary action."

In addition, Plant Manager Meier recalled: "The only thing he [Ross] said, 'Isn't there anybody that I can talk to that can help me? I know I have screwed up. I want to keep my job.'"

Meier requested Personnel Director Ferguson to join the interview. Shortly thereafter, Ferguson met in the office with Meier, Mica, and Ross. Ferguson agreed with Meier's determination to discharge Ross.

Personnel Director Mitchell Ferguson recalled speaking with Meier, Mica, and Ross on March 3, in part as follows:

> He [Ross] said that he knew he had done wrong and that he wanted to keep his job with the Company, and that he was sorry and wondered if there was anything that I [Ferguson] could do in order to get his job back.

Ferguson reviewed Ross' "disciplinary problems in the past" and the March 2 incident. He then affirmed Meier's decision to terminate the employee. Ferguson recalled that Ross made no request "that anyone attend the meeting or be there for a witness or in any way." Ferguson acknowledged, however, that during this interview:

> Mr. Ross indicated to me [Ferguson], he said, "I think I know who put the product in the tow motor." I asked Mr. Ross, I said, "Mr. Ross are you sure?" And he said, "Well somebody told me that they think that they know who put the product in the tow motor." And I said, "Mr. Ross, do you know for sure who that person is?" And he said, "No sir, I don't." And at that time, I told him I did not want any names . . . unless he was absolutely sure who the person was . . . .

Ferguson also acknowledged that, "to the best of [his] knowledge, it has been the policy of the Company not to allow representation [at such meetings with employees] if it had been requested," and in the past such requests have been denied by the Employer.

I find and conclude that during the afternoon of March 3, while Supervisor Mica and employee Ross were waiting to meet with Plant Manager Meier, Ross asked Mica: "Could I [Ross] have a Union representative or someone that's in the Company, a Union member, for a witness?" It was admittedly the policy of the Employer to deny employee requests for representation at such meetings. And, Mica effectively dismissed and brushed off Ross' request for representation and assistance by stating to the employee: "He [Mica] didn't know nothing about this." Ross did not renew his request during the ensuing meeting with management.

I do not credit Mica's assertion that during the afternoon of March 3, while waiting to speak with the plant manager, Mica only said "Hi" to Ross. As found in section B, *supra*, Mica did not impress me as a reliable and trustworthy witness. Rather, Ross' testimony that he made the above quoted request rings true on this record. Thus, Ross was an active member and supporter of the Union. Ross in fact had a "witness" who might have been able to assist him at the March 3 meeting. Employee Gatson credibly recalled that during the evening of

March 2, Gatson had revealed to Ross that coworker Gutierrez was responsible for "putting product in the forklifts." On the following day, March 3, as Gatson further credibly testified, Ross "asked" Gatson to be his "witness." Gatson agreed. However, later that afternoon, Ross explained to Gatson, "Loman [Meier] just fired me. He won't accept no witness."

Supervisor Mica acknowledged that during the meeting on March 3, Ross had asked for "help"—he "needed help." Personnel Director Ferguson was called in to provide this assistance. And, although Plant Manager Meier testified that Ross never claimed that "someone else" had "put the product there," Personnel Director Ferguson later acknowledged that Ross had attempted to explain at the meeting: "I [Ross] think I know who put the product in the tow motor . . . ." Ferguson, however, blocked this effort by the employee to vindicate himself by admittedly stating: ". . . I [Ferguson] did not want any names . . . unless he [Ross] was absolutely sure who the person was . . . ." Ross, of course, was not "absolutely sure." Further, as noted above, Ferguson acknowledged that, "to the best of his knowledge," any employee request for representation would have been denied at the time "if it had been requested."

In sum, I am persuaded here that Ross made the above request for representation and assistance to Mica. Ross wanted a "Union representative or someone that's in the Company, a Union member, as a witness." Mica, however, as stated, dismissed this request. Ross' later attempt, without such assistance, to explain to the personnel manager that "I think I know who put the product in the tow motor," was rendered ineffective by the personnel director. Ross was terminated that day.

Discussion

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as "the right to refrain from any or all such activities . . . ." Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." And, as stated by the court in *Time-O-Matic, Inc.* v. *N.L.R.B.*, 264 F.2d 96, 99 (7th Cir. 1959):

> No proof of coercive intent or effect is necessary under Section 8(a)(1) of the Act, the test being "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."

The credited evidence of record, as recited *supra*, shows that Company Supervisor Mica apprised employee Gatson during the Union's attempt to represent the Gulfgate plant employees that "if we [the employees] get the Union" there will be "no smoking" or "eating" in certain work areas; "we would probably have to end up paying for our own uniforms" which "we were getting . . . free"; and that Company President Hannegan, "as long as he be there, he would never sign a contract." In like vein, Supervisor Mica warned employee Ross: "you and your Union cats . . . it's not going to do nothing for you." Ross, at the time, was wearing a union sticker and button and had declined to perform the duties of a "porter." These statements made by a frontline supervisor were plainly calculated to impress upon employees the futility of unionization at the plant. Management "would never sign a contract" and the employees would lose existing benefits and get more onerous work rules. Such statements plainly tend to impinge upon employee Section 7 rights and, therefore, violate Section 8(a)(1) of the Act. Cf. *Henry I. Siegel Company, Inc.* v. *N.L.R.B.*, 417 F.2d 1206, 1214 (6th Cir. 1969); *N.L.R.B.* v. *Henriksen, Inc., d/b/a Gibson Discount Center*, 481 F.2d 1156, 1160–62 (5th Cir. 1973); *N.L.R.B.* v. *Thomas Products Company Division of Thomas Industries, Inc.*, 432 F.2d 1217 (6th Cir. 1970).

It is true, as counsel for Respondent notes, that employee Gatson initiated discussions about the Union with Supervisor Mica. However, it is also true that Supervisor Mica utilized these occasions to emphasize to the employee the futility of unionization and make related coercive statements about the employees' right to union representation. Thus, for example, Gatson, as he credibly testified, stated to Mica on one such occasion after "something might be messed up" at work, ". . . wait until the Union . . . ." Mica did not just reply to this comment. Mica instead warned the employee: "you will have certain rules and regulations the Company will give if it comes in . . . ." On another such occasion, Mica warned the employee: "You might end up paying for your uniforms or something." And, on another such occasion, when Gatson asked Mica "do you think the Union is going to get in here," Mica took the opportunity to admonish the employee that Company President Hannegan "will never sign the contract as long as the Union tries to negotiate." These were not, in my view, "day-to-day conversations" at work which may be viewed as noncoercive in nature (Resp. br., pp. 32–33). Rather, such statements by a supervisor, during the pending representation proceedings, as found, clearly tended to interfere with employee protected activities, in violation of Section 8(a)(1) of the Act.

The General Counsel argues that Respondent Company further violated Section 8(a)(1) by denying employee Ross' request for representation or assistance at his disciplinary meeting on March 3, 1978. Counsel for Respondent argues, *inter alia*, that employee Ross "never requested Union representation before or during his interview" and, in any event, "no right to a Union representative arises where the Union is uncertified" at the time of such request (Resp. br., pp. 18–29). In *N.L.R.B.* v. *Weingarten, Inc.*, 420 U.S. 251 (1975), the Supreme Court affirmed the determination of the Board that an employer violated Section 8(a)(1) of the Act by denying an employee's request that her union representative be present at an investigatory interview which the employee reasonably believed might result in disciplinary action. The Court noted that "the right arises only where the employee requests representation"; the "employee may forgo his

guaranteed right and, if he prefers, participate in an interview unaccompanied by his union representative"; and the "representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them. . . ." The Court further noted:

> A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors.

Also see *Garment Workers* v. *Quality Mfg. Co.*, 420 U.S. 276 (1975).

More recently, in *Anchortank, Inc.*, 239 NLRB 430 (1978), the Board applied the *Weingarten* rationale, stating as follows:

> The central issue of the *Weingarten* decision was whether the employee's Section 7 right to engage in concerted activity extended to the encounter between employee and employer in an interview which could reasonably be expected to result in disciplinary action. In that case, the concerted activity took the specific form of a request for assistance from a statutory representative. However, the Court and the Board placed the emphasis upon the employee's right to act concertedly for protection in the face of a threat to job security, and not upon the right to be represented by a duly designated collective-bargaining representative. This is evidenced by the Court's holding that the employer has no duty to bargain with a union representative who attends the interview. Indeed, the union representative's role is limited to assisting the employee and possibly attempting to clarify the facts or suggest other employees who may have knowledge of them. Thus, the union representative is not permitted to use the powers conferred upon the union by its designation as collective-bargaining agent, and, in essence, may do no more during the course of the interview than could a fellow employee.
>
> For these reasons we are persuaded that, in *Weingarten*, the Court's primary concern was with the right of employees to have some measure of protection when faced with a confrontation with the employer which might result in adverse action against the employee. These employee concerns remain whether or not the employees are represented by a union. Here, [the] employees requested union representation at a time when the union had been selected by a majority of employees in a Board-conducted election, but had not yet been certified as bargaining representative. Their request was an exercise of the right guaranteed to them by Section 7 to act in concert for mutual aid and protection. In these circumstances, the status of the requested representative, whether it be that of union not yet certified or simply that of fellow employee, does not operate to deprive the employees of the rights which they enjoy by virtue of the plain mandate in Section 7.

And see *Glomac Plastics, Inc.*, 234 NLRB 1309 (1978).

In the instant case, it is undisputed that employee Ross "had reasonable cause to believe on March 3, 1978, that discipline was going to be meted out to him in the meeting that he was instructed to attend . . . ." The critical question is whether employee Ross sufficiently articulated "a request for assistance" by either a union representative or fellow employee at this meeting. I find and conclude on this record that employee Ross made such a request for assistance to Supervisor Mica shortly before his meeting on March 3. No magic or special words are required to satisfy this element of the *Weingarten* rationale. It is enough if the language used by the employee is reasonably calculated to apprise the Employer that the employee is seeking such assistance. Here, Ross' statement to Supervisor Mica—"Could I have a Union representative or someone that's in the Company, a Union member, for a witness"—amply notified the Employer's representative that the employee wanted and needed the aid of a union representative or a fellow employee. Admittedly, it was the policy of the Employer to deny such requests, and Mica, as found, brushed off and avoided the request by telling the employee: "He [Mica] didn't know nothing about this." Ross, who was attempting to save his job, "just sat there."

Ross did not thereafter renew this request for assistance. However, after being apprised by the plant manager that he was in fact terminated, Ross then determined to go it alone in his own defense. Ross asked for "help." The "help" provided by the Employer was the personnel director. Ross, while waiting for the personnel director, went to and asked coworker Gatson to be his "witness" and explain who had put the case of Coca Cola in his forklift. Gatson agreed to be his "witness." Later, when Ross attempted to articulate to the personnel director, "I [Ross] think I know who put the product in the tow motor," the personnel director instructed the employee not to give "any names . . . unless he was absolutely sure." Ross, of course, was not "absolutely sure" and, consequently, abandoned even this attempt to present his defense.

Under the circumstances, employee Ross made a sufficient request for assistance within the *Weingarten* rule; he did not waive his statutory right to this assistance under the facts of this case; and management effectively rejected the employee's request. I find and conclude that Respondent, by this conduct, violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by warning employees that it would never sign a contract with the Union and that employees would lose existing benefits and get more onerous work rules if they chose union representation.

4. Respondent further violated Section 8(a)(1) of the Act by denying employee Ross' request that a union representative or fellow employee be present at an investigatory interview which the employee reasonably believed might result in disciplinary action.

5. Respondent has not committed other unfair labor practices as alleged in the complaint in this case.

6. The unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Respondent will be directed to cease and desist from engaging in the unfair labor practices found above or from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of their Section 7 rights, and to post the attached notice. Further, I find that employee Ross' discharge on March 3, 1978, was unlawful inasmuch as it was the result of the interview wherein he was unlawfully prevented from securing the requested assistance. Respondent will therefore be directed to offer reinstatement to employee Ross to his former position or, if that position no longer exists, to a substantially equivalent position, and make Ross whole for any loss of pay suffered by him as a result of the discrimination against him, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest to be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[4] And see, *Anchortank, Inc., supra.*

ORDER[5]

The Respondent, Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company, Houston, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Warning its employees that Respondent will never sign a contract with Sales Drivers, Deliverymen, Warehousemen and Helpers Local 949, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(b) Warning its employees that they will lose existing benefits or get more onerous work rules if they choose union representation.

(c) Denying employee requests that a union representative or fellow employee be present at investigatory interviews or meetings which the employee reasonably believes may result in disciplinary action.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer employee Steven Ross immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, and make him whole for any loss of earnings he may have suffered as a result of the discrimination against him, in the manner set forth in this Decision.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amount of backpay due under the terms of this Order.

(c) Post at its facility in Houston, Texas, copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges unfair labor practices not found herein.

[4] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[5] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."